

(ii) no such transfer, sale or other disposition shall be made to a ~~person or entity~~ Person that as of the date of such transfer, directly or indirectly through an affiliate, is engaged, in ~~whole or in part~~ any material respect in the same or similar business (regardless of the location) as that in which the Company or any of its subsidiaries is then engaged; and

(iii) this Note may not be transferred, sold or otherwise disposed of in principal amounts of less than the lesser of \$25 million or the actual principal amount of this Note.

(c) This Note may not be transferred, sold, otherwise disposed of or subdivided in principal amounts of less than the lesser of \$25 million or the ~~actual then-~~ outstanding principal amount of this Note. Subject to the foregoing sentence, upon surrender of this Note for registration of transfer as otherwise permitted herein or for exchange to the Company at its principal office or upon a partial redemption of the Note, the Company, at its expense, will execute and deliver in exchange therefor a new Note or Notes, as the case may be, which aggregate the unpaid principal amount of the Note, registered as such holder or transferee may request, dated so that there will be no loss of interest on the surrendered Note and otherwise of the same class of Securities and of like tenor.

(d) Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of the Note and, in the case of any such loss, theft or destruction of the Note, upon delivery of an indemnity bond in such reasonable amount as the Company may determine (or, at the discretion of the Company, an unsecured indemnity agreement from the holder), or, in the case of any such mutilation, upon the surrender of such Note for cancellation to the Company at its principal office, the Company at its expense will execute and deliver, in lieu thereof, a new Note of the same class of Securities and of like tenor, dated so that there will be no loss of interest on (and registered in the name of the holder of) such lost, stolen, destroyed or mutilated Note. Any Note in lieu of which any such new Note has been so executed and delivered by the Company shall be deemed to be not outstanding.

(e) The Company agrees that, within 15 days of receiving such request from the holder of this Note, it shall provide the holder with a list of names and addresses of the holders of the other Securities.

#### Section 3.4 Payment.

The Company shall make each payment (including principal or redemption price of or interest on the Note or other amounts) hereunder not later than 11 a.m., New York City time, on the date when due in immediately available U.S. dollars. Each such payment shall be made to the holder pursuant to written instructions from such Holder to the Company, including pursuant to wire transfer instructions. Notwithstanding anything to the contrary contained in this Note, the Company may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from payments on the Note required hereunder.

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ARTICLE 4  
SUCCESSOR CORPORATION

Section 4.1 When the Company May Merge or Transfer Assets.

The Company shall not consolidate with or merge with or into any other Person (other than in a merger or consolidation in which the Company is the surviving or continuing Person) or sell, convey, transfer, assign or lease its properties and assets substantially as an entirety to any Person, unless:

(i) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, conveyance, transfer, assignment or lease the properties and assets of the Company substantially as an entirety shall be a corporation, limited liability company, partnership or trust organized and validly existing under the laws of the United States or any State thereof or the District of Columbia, and shall expressly assume by a note, executed and delivered to the holder in form reasonably satisfactory to the holder, the due and punctual payment of the then outstanding principal amount of this Note, and accrued but unpaid interest thereon, and the due and punctual performance of all of the covenants and obligations of the Company under this Note; and

(ii) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.

The successor Person formed by such consolidation or into which the Company is merged or the successor Person to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Note with the same effect as if such successor had been named as the Company herein; and thereafter the Company shall be discharged from all obligations and covenants hereunder.

ARTICLE 5  
DEFAULTS AND REMEDIES

Section 5.1 Events of Default.

An "Event of Default" occurs if:

(1) the Company defaults in the payment of interest on the Note when the same becomes due and payable, whether or not such payment shall be prohibited by Article 6 hereof, and such failure continues for 60 days after receipt by the Company of a Notice of Default;

(2) the Company defaults in the payment of the principal amount when the same becomes due and payable at the Stated Maturity or upon redemption, whether or not such payment shall be prohibited by Article 6 hereof;

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(3) the Company fails to comply with any of its agreements or covenants herein (other than those referred to in ~~clause~~clauses (1) and (2) above) and such failure continues for 60 days after receipt by the Company of a Notice of Default;

(4) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization of the Company under any Bankruptcy Law, and such decree or order shall have continued undischarged and unstayed for a period of 60 consecutive days; or a decree or order of a court having jurisdiction in the premises of the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the Company or of its property, or for the winding-up or liquidation of its affairs, shall have been entered, and such decree or order shall have remained in force undischarged and unstayed for a period of 60 consecutive days; or

(5) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization under any Bankruptcy Law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due.

A Default under clause (3) above is not an Event of Default until the holders of at least 25% of the then-outstanding principal amount of the Securities notify the Company of the Default and the Company does not cure such Default (and such Default is not waived) within the 60 days after actual receipt of such notice (a "Notice of Default"). Any such notice must specify the Default, demand that it be remedied and state that such notice is a Notice of Default.

#### Section 5.2 Acceleration.

If an Event of Default (other than an Event of Default specified in clause (4) or (5) of Section 5.1 hereof) occurs and is continuing, the holders of at least 25% of the then-outstanding principal amount of the Securities, by notice to the Company may declare the outstanding principal amount and any accrued but unpaid interest thereon to the date of declaration to be immediately due and payable. Upon such a declaration, such principal amount and accrued but unpaid interest shall become and be due and payable immediately. If an Event of Default specified in clause (4) or (5) of Section 5.1 hereof occurs and is continuing, the principal amount and any accrued but unpaid interest shall become and be immediately due and payable without any declaration or other act on the part of the holder. The holders of a majority of the then-outstanding principal amount of the Securities, by notice to the Company, may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of the principal amount and interest thereon that has become due solely as a result of acceleration. No such rescission shall affect any subsequent or other Default or Event of Default or impair any consequent right.

#### Section 5.3 Other Remedies.

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If an Event of Default occurs and is continuing, the holder may pursue any available remedy to collect the payment of the outstanding principal amount and any accrued but unpaid interest on this Note or to enforce the performance of any provision hereof.

A delay or omission by the holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

#### Section 5.4 Waiver of Past Defaults.

The holders of a majority of the then-outstanding principal amount of the Securities, by notice to the Company, may waive an existing Default or Event of Default and its consequences except (1) an Event of Default described in clause (1), (2) or (3) of Section 5.1 or, (2) a Default in respect of a provision that under Section 7.2 hereof cannot be amended without the consent of each holder affected. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

#### Section 5.5 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Note, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 5.5 does not apply to a suit by the holder for the enforcement of the payment of the principal amount or accrued but unpaid interest on or after the due date.

#### Section 5.6 Waiver of Stay, Extension or Usury Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of the principal amount or any interest thereon, as contemplated herein, or which may affect the covenants or the performance of this Note.

## ARTICLE 6 SUBORDINATION

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#### Section 6.1 Agreement of Subordination.

The obligations arising from this Note and the other Securities shall rank *pari passu* with those of the Company's \$260,000,000 principal amount of Zero Coupon Convertible

Subordinated Debentures Due 2019 issued under an Indenture dated as of July 2, 1999, as such Indenture may be amended from time to time.

The payment of the principal amount or interest thereon in respect of this Note shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full in cash or other payment satisfactory to the holders of Senior Indebtedness of all Senior Indebtedness of the Company, whether outstanding at the date of this Note or thereafter incurred, or thereafter created, assumed or guaranteed.

No provision of this Article 6 shall prevent the occurrence of any Default or Event of Default hereunder.

#### Section 6.2 Notice to the Holders

The Company shall give prompt written notice to the holder of any fact known to the Company which would prohibit the making of any payment of monies in respect of this Note pursuant to the provisions of this Article 6, but failure to give such notice shall not affect the subordination of the Securities to the Senior Indebtedness as provided in this Article 6.

#### Section 6.3 Payments to the Holder.

No payment shall be made with respect to the payment of any principal or interest on this Note, if:

(i) a default in any payment obligations in respect of Designated Senior Indebtedness occurs and is continuing, without regard to any applicable period of grace (whether at maturity or at a date fixed for payment or by declaration or otherwise); or

(ii) any other default occurs and is continuing with respect to Designated Senior Indebtedness that permits the holders of such Designated Senior Indebtedness as to which such default relates to accelerate its maturity and the Company receives a notice of the default (a "Payment Blockage Notice") from a holder, or a representative of holders, of Designated Senior Indebtedness.

If the Company receives any Payment Blockage Notice pursuant to clause (ii) above, no subsequent Payment Blockage Notice shall be effective for purposes of this Section unless and until at least 365 days shall have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice. No nonpayment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Company shall be the basis for a subsequent Payment Blockage Notice (it being acknowledged that (x) any action of the Company or any of its subsidiaries occurring subsequent to delivery of a Payment Blockage Notice that would give rise to any event of default pursuant to any provision of Senior Indebtedness under which an event of default previously existed (or was continuing at the time of delivery of such Payment Blockage Notice) shall constitute a new event of default for this purpose and (y) any breach of a financial covenant giving rise to a nonpayment default for a period ending subsequent to the date of delivery of the respective Payment Blockage Notice shall constitute a new event of default for this purpose).

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The Company may and shall resume payments on and distributions in respect of this Note:

(1) in case of a default referred to in clause (i) above, the earlier of the date upon which the default is cured or waived in accordance with the terms of the governing instrument or ceases to exist, or

(2) in the case of a default referred to in clause (ii) above, the earlier of the date upon which the default is cured, waived in accordance with the terms of the governing instrument or ceases to exist or 179 days pass after the applicable Payment Blockage Notice is received if the maturity of such Designated Senior Indebtedness has not been accelerated, unless this Article 6 otherwise prohibits the payment or distribution at the time of such payment or distribution.

Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization or bankruptcy of the Company, whether voluntary or involuntary, or insolvency, receivership or similar proceedings relating to the Company or its property, or an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, all amounts due or to become due upon all Senior Indebtedness of the Company shall first be paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness before any payment is made on account of the principal or interest in respect of this Note, and upon any such dissolution or winding-up or liquidation or reorganization or bankruptcy of the Company, whether voluntary or involuntary or insolvency, receivership or similar proceedings relating to the Company or its property, or an assignment for the benefit of creditors or any marshaling of the Company's assets or liabilities, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the holder of this Note would be entitled, except for the provisions of this Article 6, shall (except as aforesaid) be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the holder of this Note if received by them or it, directly to the holders of Senior Indebtedness of the Company, as their respective interests may appear, or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay all such Senior Indebtedness in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness, before any payment or distribution is made to the holders of this Note or the other Securities.

In the event that, notwithstanding the foregoing provisions, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (including, without limitation, by way of setoff or otherwise), prohibited by the foregoing provisions in this Section 6.3, shall be received by the holder of this Note before all Senior Indebtedness of the Company is paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of Senior Indebtedness of the Company or their representative or representatives, or to the trustee or trustees under any